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3 **UNITED STATES DISTRICT COURT**  
4 **FOR THE EASTERN DISTRICT OF MICHIGAN**

5 **DAVIS DARRYL,** ) **Case No.:**  
6 )  
7 Plaintiff, )  
8 v. )  
9 **CREDIT ACCEPTANCE** ) **JURY TRIAL DEMANDED**  
10 **CORPORATION,** )  
11 Defendant. )

12 **COMPLAINT**

13 DAVIS DARRYL (“Plaintiff”), by and through his attorneys, KIMMEL &  
14 SILVERMAN, P.C., alleges the following against CREDIT ACCEPTANCE  
15 CORPORATION (“DEFENDANT”):

16  
17 **INTRODUCTION**

18 1. Plaintiff’s Complaint is based on the Telephone Consumer Protection  
19 Act, 47 U.S.C. §227.

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21 **JURISDICTION AND VENUE**

22 2. Jurisdiction of this Court arises under 28 U.S.C. § 1331. See Mims v.  
23 Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).  
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1           13. Defendant used an automatic telephone dialing system, automated  
2 message and/or prerecorded voice when contacting Plaintiff.

3           14. Plaintiff knew that Defendant was using an automatic telephone  
4 dialing system, automated message and/or prerecorded voice as the calls from  
5 Defendant would begin with a prerecorded message.

6           15. Upon the initiation of calls in or around March 2017, Plaintiff spoke to  
7 Defendant and told them that he could not pay the alleged debt at the time and to  
8 therefore stop placing calls to his cellular telephone regarding the alleged debt.  
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10           16. Despite Plaintiff's clear revocation of consent, Defendant continued to  
11 contact him through January 2018 regarding the alleged debt.  
12

13           17. Defendant's telephone calls were not made for "emergency purposes."  
14

15           18. Once Defendant was aware that its calls were unwanted and to stop,  
16 there was no lawful purpose to continue making further calls, nor was there any  
17 good faith reason to place such calls.  
18

19           19. Defendant refused to update its records to restrict telephone calls to  
20 Plaintiff's cellular telephone despite Plaintiff's repeated instruction to stop calling.

21           20. Undaunted by Plaintiff's demands to cease calling, Defendant  
22 continued to call Plaintiff on his cellular telephone an excessive number of times  
23 per day or per week through in or around January 2018.  
24

1           21. It was frustrating, annoying and distressing for Plaintiff to receive  
2 such continuous and repeated telephone calls from Defendant on his cellular  
3 telephone.  
4

5           22. Upon information and belief, Defendant conducts business in a  
6 manner which violates the TCPA.  
7

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9                                   **COUNT I**  
10                                  **DEFENDANT VIOLATED THE TELEPHONE CONSUMER**  
   **PROTECTION ACT**

11           23. Plaintiff incorporates the forgoing paragraphs as though the same were  
12 set forth at length herein.  
13

14           24. Defendant initiated multiple automated telephone calls to Plaintiff's  
15 cellular telephone number.  
16

17           25. Defendant's initiated these automated calls to Plaintiff using an  
18 automatic telephone dialing system.  
19

20           26. Defendant repeatedly placed non-emergency calls to Plaintiff's  
21 cellular telephone.  
22

23           27. Under § 227(b)(3)(A) of the TCPA, a person or entity may bring a  
24 private cause of action in an appropriate court based on a violation of the TCPA or  
25 the regulations prescribed under the TCPA to enjoin such violation.  
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1           28. Under § 227(b)(3)(B) of the TCPA, a person or entity may bring a  
2 private cause of action in an appropriate court “to recover for actual monetary loss  
3 from such a violation, or to receive \$500 in damages for each such violation  
4 whichever is greater.”

5  
6           29. Based upon the conduct of Defendant, Plaintiff avers that the  
7 enhancement of damages provided for by the TCPA allowing for Plaintiff to  
8 recover up to \$1,500 per call/violation be applied to calls placed.

9  
10          30. Defendant’s conduct violated § 227(b)(1)(A)(iii) of the TCPA by  
11 placing repeated calls using an automatic telephone dialing system to Plaintiff’s  
12 cellular telephone.

13  
14          31. Defendant’s calls to Plaintiff’s cellular telephone after he revoked  
15 consent were not made with Plaintiff’s prior express consent.

16          32. Defendant’s acts as described above were done with malicious,  
17 intentional, willful, reckless, wanton and negligent disregard for Plaintiff’s rights  
18 under the law and with the purpose of harassing Plaintiff.

19  
20          33. The acts and/or omissions of Defendant were done unfairly,  
21 unlawfully, intentionally, deceptively and fraudulently and absent bona fide error,  
22 lawful right, legal defense, legal justification or legal excuse.

1           34. As a result of the above violations of the TCPA, Plaintiff has suffered  
2 the losses and damages as set forth above entitling Plaintiff to an award of  
3 statutory, actual and trebles damages.  
4

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6 **PRAYER FOR RELIEF**

7           WHEREFORE, Plaintiff, DARRYL DAVIS, respectfully prays for a judgment  
8 as follows:  
9

- 10           a. All actual damages suffered pursuant to 47 U.S.C. §  
11           227(b)(3)(A);  
12           b. Statutory damages of \$500.00 per violative telephone call  
13           pursuant to 47 U.S.C. § 227(b)(3)(B);  
14           c. Treble damages of \$1,500.00 per violative telephone call  
15           pursuant to 47 U.S.C. §227(b)(3);  
16           d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3); and  
17           e. Any other relief deemed appropriate by this Honorable Court.  
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22 **DEMAND FOR JURY TRIAL**

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24           PLEASE TAKE NOTICE that Plaintiff, DARRYL DAVIS, demands a jury  
25 trial in this case.  
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1  
2 RESPECTFULLY SUBMITTED,

3 Dated: January 14, 2019

4 By: /s/ Amy L. Bennecoff Ginsburg

5 Amy L. Bennecoff Ginsburg, Esq.

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